IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.150 OF 2005

IN

NOTICE OF MOTION NO. 4773 OF 2003

IN

B.C.C.C.S.C. SUIT NO.5656 OF 2003

1.Yusuf Gazi Kabaria & Ors. .. Appellants
(Orig.Plaintiffs)

V/s

1.Smt.Noorben Dadu @ Dadan Kabaria
& Ors. .. Respondents
(Orig.Defendants)

Mr. G.V.Pandey for appellants
Mr. S.R. Mishra for respondents No.1 and 2

Coram : A.S. Oka, J.

Date : 8th February,2005

P.C

1 This appeal is filed by the Appellants/Plaintiffs. They have taken an exception to the order dated 21st July 2004 passed by the learned Trial Judge. By the impugned order the learned Trial Judge has dismissed a notice of motion filed by appellants/plaintiffs.

2 The averments made in the plaint by the Appellants show that according to the Appellants,they are the co-

owners of the suit property along with some of the defendants. In paragraph-5 of the impugned order the learned Trial Judge has recorded afinding that plaintiff is admittedly not in possession of property. Moreover, I find that plaintiffs have not filed a substantive suit for partition or possession.

3 In this view of the matter, no fault can be found in the order of the learned trial judge by which he rejected the notice of motion for temporary injunction. There is no merit in the appeal.

4 It is obvious that the learned Trial Judge will decide the suit without being influenced by the findings recorded in the impugned order.

5 The appeal is dismissed. No order as to costs.

(A.S. Oka, J.)